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David J. Karp, Senior Counsel  
Office of Legal Policy, Department of Justice  
950 Pennsylvania Avenue NW, Room 4234  
Washington, DC 20530

### **Profiling Immigration Detainees via DNA Sampling: A Violation of Rights and An Unethical Use of Biotechnology**

**Re: Comment on** DEPARTMENT OF JUSTICE 28 CFR Part 28 [Docket Number OAG-164; AG Order No. 4537-2019] RIN 1105-AB56 DNA-Sample Collection from Immigration Detainees

Dear Mr. Karp,

I am writing on behalf of Physicians for Human Rights (PHR) to express our strong objections to the proposed rule: DEPARTMENT OF JUSTICE 28 CFR Part 28 [Docket Number OAG-164; AG Order No. 4537-2019] RIN 1105-AB56 DNA-Sample Collection from Immigration Detainees.

PHR is an international non-governmental organization that for more than 30 years has used science and the uniquely credible voices of medical professionals to document and call attention to severe human rights violations around the world.

In this Public Comment, PHR argues that **the Department of Justice [proposed rule change](#) for collecting genetic material from immigrants in federal detention is a dangerous misapplication of biotechnology that breaches fundamental civil and human rights. The proposal would populate the CODIS DNA forensic database with information of highly questionable value while stigmatizing immigrants and subjecting them to risks when inevitable mistakes in DNA forensics are made.**

As scientists and physicians, we understand the ways in which a person's DNA represents some of his or her most sensitive and private information. We are well aware of the power of the technology and its potential benefits. PHR recognizes that there are contexts in which DNA testing is appropriate and can serve legitimate law enforcement or humanitarian purposes. For example, PHR has supported DNA testing in criminal investigations of extrajudicial killings and, in some cases, sexual violence, as well as



using DNA testing to identify the missing in the Balkans and El Salvador. We can imagine beneficial uses of DNA profiles among immigrant populations, such as matching remains to known databases for identification, which could be of real value to the families if appropriate data protections and safeguards were in place.

However, the value added by the indiscriminate collection of DNA profiles, likely obtained through coercion, into a database used solely for solving serial violent crimes is highly speculative and undermined by the very example provided in the executive order. The rule only allows DNA collection; border detection of “matches” to the CODIS database are not enabled and would require extensive further training of border agents. The illustrative example is simply implausible. The rule proposes extensive expansion of DNA collection with no assessment of the benefits for law enforcement against infringements on the right to privacy.

Instituting a blanket policy of collecting DNA from immigrants for the purpose of criminal prosecution will unfairly stigmatize a group [proven to commit crimes at a lower rate than native-born Americans](#). It will bloat the CODIS database with largely useless information about a low-risk population and could be used to harm those put into the database if mistakes are made. The proposed rule fails to acknowledge the harms of mistakes in DNA forensics that are well known and have been [documented](#) by the National Research Council of the National Academies of Sciences, Engineering, and Medicine. The reliability of DNA testing remains imprecise for certain uses. Issues of lab contamination, statistical errors, errors by lab technicians, and contamination during the collection process can reduce the accuracy of DNA testing, especially when collected under field (rather than laboratory) conditions. For instance, a 2018 [study](#) by the National Institute of Standards and Technology found that only 6 percent of labs correctly analyzed a complicated forensic DNA sample. There are no provisions in the proposed rule to address these important limitations, despite the fact that errors could lead to people being misidentified as having committed crimes.

The proposed rule is yet another example in a pattern of arbitrary, disproportionate, and punitive immigration enforcement practices with serious ethics and rights implications, as previously described in PHR reports, [“Zero Protection: How U.S. Border Enforcement Harms Migrant Safety and Health”](#) and [“Not in my Exam Room: How U.S. Immigration Enforcement Is Obstructing Medical Care.”](#) Such a procedure which intrudes on bodily integrity, and which captures a person’s entire genetic identity, must be a measure of last resort with a deeply compelling justification in order to override the right to privacy to such an extent. However, the proposed rule fails to provide a justification for such interference into personal and family life.

Finally, the costs and resource demands of this proposed task will certainly exceed the capacity of agencies already struggling to provide basic services like water, food, and soap for those in custody.

PHR also notes that the short timeframe of this comment period for a proposal with such serious implications, only 20 days, demonstrates that the administration is once



again seeking to roll out a harmful and unnecessary policy without allowing adequate time for consultation and without a reasonable operational plan by which to implement it.

PHR requests that the government address these important questions:

1. Who will be subject to DNA collection under this new rule? Will asylum seekers who enter at legal ports of entry be included in this group? What age brackets, if any, will be exempt?
2. How will the DNA be collected? Do individuals have a right to refuse? If someone refuses, will their DNA be collected through the use of force?
3. What information will be extracted from the DNA, where will it be stored, and for how long will it be kept? Who will have access to this genetic information? If medical information is derived from the DNA samples (such as genetic test results), will it receive privacy protections?
4. Who will be trained to do the collection? How will they be trained?

Sincerely,

Donna McKay  
Executive Director  
Physicians for Human Rights